

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 STRE-00 AGRE-00
CEA-01 CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 STR-07 ITC-01 TRSE-00 ICA-11 SP-02
SOE-02 OMB-01 DOE-15 (ISO) W
-----024507 311717Z /64

P 251502Z MAY 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 0098
INFO AMEMBASSY BRUSSELS
AMEMBASSY HELSINKI
AMEMBASSY LONDON
AMEMBASSY OTTAWA
AMEMBASSY PARIS
AMEMBASSY STOCKHOLM
AMEMBASSY TOKYO

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PARIS ALSO FOR OECD
BRUSSELS FOR USEEC

PASS STR ELECTRONICALLY
PASS TREASURY

E.O. 11652: N/A
TAGS: ETRD, GATT
SUBJECT: EXPORT COST INFLATION INSURANCE SCHEMES (EII)

1. SINCE GATT COUNCIL MET MAY 17 WE HAVE HELD SEVERAL
MEETINGS WITH KEY DELS IN AN EFFORT TO CLARIFY AND NARROW
POSITIONS ON EXPORT COST INFLATION INSURANCE SCHEMES.
FOLLOWING IS OUR ASSESSMENT OF THE CURRENT POSITIONS.

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2. AT TWO INFORMAL WORKING SESSIONS HOSTED BY DDG
PATTERSON TWO SETS OF TERMS OF REFERENCE FOR PROPOSED
PANEL WERE DEVELOPED. THEY WERE:

(1) "TO EXAMINE, TAKING INTO ACCOUNT THE REPORT OF
THE WORKING PARTY, THE APPLICATION OF ARTICLE XVI TO
EXPORT COST INFLATION INSURANCE SCHEMES AND TO REPORT

ITS FINDINGS TO THE COUNCIL."

(2) "TO EXAMINE, PURSUANT TO ARTICLE XVI:5, AND TAKING INTO ACCOUNT THE REPORT OF THE WORKING PARTY ON EXPORT INFLATION INSURANCE SCHEMES (L/4552), WHETHER AND UNDER WHAT CONDITIONS EXPORT INFLATION INSURANCE SCHEMES ARE EXPORT SUBSIDIES WITHIN THE MEANING OF ARTICLE XVI:4, AND TO REPORT ITS FINDINGS TO THE COUNCIL."

3. FRENCH DEL (MOUTON) SAYS THAT HE BELIEVES PARIS WAS ABOUT READY TO ACCEPT SECOND TERMS OF REFERENCE WHEN HE LEARNED THAT CANADA COULD NOT ACCEPT THEM AND PARIS DELAYED TAKING DECISION. AT LAST INFORMAL MEETING MOUTON ARGUED THAT TERMS SHOULD BE EXPANDED TO INCLUDE "OTHER SCHEMES" SIMILAR TO EII (E.G., EXCHANGE GUARANTEE SCHEMES). NOW HE BELIEVES HE HAS CONVINCED PARIS TO DROP INSISTENCE ON INCLUSION OF OTHER SCHEMES. WHILE HE IS NOT 100 PERCENT SURE, HE SAYS THAT PARIS' MAIN CONCERN WAS TO MENTION SPECIFIC GATT ARTICLES IN TERMS OF REFERENCE AND THAT QUESTION OF OTHER SCHEMES WAS OF LESS IMPORTANCE. HE SAYS, ALTHOUGH HE THINKS PARIS CAN ACCEPT EITHER OF THE TWO TERMS OF REFERENCE LISTED ABOVE, THE SECOND IS PREFERABLE.

4. THE UK DEL SAYS THAT LONDON CAN ACCEPT EITHER OF ABOVE TERMS OF REFERENCE ALTHOUGH IT ALSO PREFERENCES THE SECOND. HE SAYS THAT LONDON, AT ONE POINT, ALSO WANTED LIMITED OFFICIAL USE

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TO INCLUDE OTHER SCHEMES BUT THAT HE ARGUED SUCCESSFULLY THAT THEY SHOULD BE LEFT OUT OF THE TERMS OF REFERENCE.

5. SWISS DEL SAYS THAT HE CAN ACCEPT EITHER OF ABOVE TERMS OF REFERENCE BUT THAT HE CANNOT ACCEPT TERMS OF REFERENCE WHICH INCLUDE OTHER SCHEMES. WE ASKED IF HE COULD ACCEPT A SEPARATE PANEL FOR EXCHANGE GUARANTEE SCHEMES IF THESE SCHEMES WERE INDEED THE FRENCH CONCERN. HE REPLIED THAT EXCHANGE GUARANTEE SCHEMES HAVE NOT BEEN EXAMINED AND HAVE NOT BEEN THE SUBJECT OF BILATERAL CONSULTATIONS. HE WOULD THEREFORE ARGUE THAT THE FRENCH OR WHOEVER WAS INTERESTED IN SUCH SCHEMES SHOULD FOLLOW OTHER PROCEDURES BEFORE DEMANDING A PANEL.

6. FINNISH DEL SAYS THAT HE CAN ACCEPT EITHER TERMS OF REFERENCE AND COULD ALSO ACCEPT INCLUSION OF OTHER SCHEMES INCLUDING EXCHANGE GUARANTEE SCHEMES.

7. SWEDISH DEL ALSO CAN ACCEPT BOTH ABOVE TERMS OF REFERENCE BUT WOULD HAVE DIFFICULTIES IF THEY WERE EXPANDED TO INCLUDE OTHER SCHEMES SINCE SWEDEN ALSO MAINTAINS AN EXCHANGE GUARANTEE SCHEME. HE SAYS, HOWEVER, IF

OTHERS INSISTED ON INCLUSION OF EXCHANGE GUARANTEE SCHEMES, THAT HE WOULD NOT BLOCK FORMATION OF PANEL. HE WOULD NOT, HOWEVER, ACCEPT ESTABLISHMENT OF A SEPARATE PANEL TO EXAMINE EXCHANGE GUARANTEE SCHEMES.

8. JAPANESE DEL CAN ALSO ACCEPT BOTH TERMS OF REFERENCE BUT CANNOT ACCEPT INCLUSION OF OTHER SCHEMES IF REFERENCE IS LEFT VAGUE. ON OTHER HAND, IF "OTHER SCHEMES" IS CLEARLY DEFINED TO MEAN ONLY EXCHANGE GUARANTEE SCHEMES AND DOES NOT INCLUDE JAPANESE TAX SCHEME, HE COULD ACCEPT.

9. CANADIAN DEL, WHO ORIGINALLY PROPOSED COMPROMISE FIRST TERMS OF REFERENCE SHOWN ABOVE AFTER IT BECAME OBVIOUS

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PARIS ALSO FOR OECD
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THAT OTHER DELS WOULD NOT ACCEPT ORIGINAL STRONG CANADIAN
TERMS OF REFERENCE, HAS NOW HAD SECOND THOUGHTS. HE

BELIEVES THAT EITHER TERMS OF REFERENCE RUN RISK OF OBTAINING A WEAK DECISION FROM PANEL ESPECIALLY IF PANEL NARROWLY INTERPRETS TERMS OF REFERENCE. HE SAYS THAT PANEL COULD MAKE DECISION THAT EXPORT COST INFLATION SCHEMES WHICH ARE SELF-FINANCING ARE NOT SUBSIDIES WITHIN MEANING OF XVI:4 BUT WITHOUT ANY CLEAR DEFINITION OF WHAT IS SELF-FINANCING, AND THEREFORE STILL LEAVE THE QUESTION LIMITED OFFICIAL USE

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OPEN. WHILE WE ALSO RECOGNIZE THIS RISK, WE ARGUED THAT THIS IS A CASE WHERE WE WOULD HAVE TO RELY UPON A STRONG PANEL AND ACTIVE SECRETARIAT PARTICIPATION IN THE PANEL'S WORK. THIS PANEL COULD BE A PRIME EXAMPLE OF WHERE THE SECRETARIAT SHOULD PLAY A STRONG ROLE IN GUIDING THE WORK OF THE PANEL; THAT IS, THE SECRETARIAT SHOULD MAKE IT CLEAR TO THE PANEL THAT A CLEARCUT DECISION THAT LEAVES LITTLE ROOM FOR DIFFERING INTERPRETATIONS IS DESIRABLE IN THIS CASE. SINCE IT IS CLEAR THAT THE FINNS, UK AND FRANCE WILL NOT ACCEPT THE ORIGINAL CANADIAN TERMS OF REFERENCE WHICH STATE THAT THEIR SCHEMES SHOULD BE EXAMINED FOR THEIR COMPATIBILITY WITH THE GENERAL AGREEMENT, ONE OF THE ABOVE SETS OF TERMS OF REFERENCE IS THE STRONGEST WE ARE LIKELY TO OBTAIN. THIS LEAVES US WITH THE CHOICE OF TAKING THE RISK OF SETTING UP A PANEL UNDER THESE TERMS OF REFERENCE OR OF USING ARTICLE XXIII FOR A SPECIFIC COMPLAINT AGAINST ONE OR MORE OF THE SCHEMES (PRESUMABLY THE FRENCH). THE CANADIANS TOLD US THAT THEY DO NOT RPT NOT INTEND TO PURSUE THIS MATTER FURTHER FOR THE MOMENT EXCEPT IN THE CONTEXT OF THE MTN. THEY DO NOT RPT NOT INTEND TO INVOKE ARTICLE XXIII AT THIS DATE, AND WOULD WAIT OUTCOME OF MTN BEFORE FACING DECISION. THEY WERE, WE UNDERSTAND, PREPARED TO SAY AT THE LAST COUNCIL THAT THEY WOULD DEFER MATTER UNTIL END OF MTN, BUT WE PREVAILED UPON THEM TO LEAVE OPTIONS OPEN. CANADIAN DEL SAYS THAT THE BALL IS NOW IN OUR COURT IF WE WISH TO PURSUE MATTER FURTHER.

10. ALTHOUGH WE ARE NOT COMPLETELY SURE THAT THE FRENCH WILL GO ALONG WITHOUT ATTEMPTING TO ENLARGE THE TERMS OF REFERENCE, WE DO BELIEVE THAT WE ARE CLOSE TO AN AGREEMENT ON EITHER OF THE ABOVE TERMS OF REFERENCE IF WE CAN GET THE CANADIANS ACCEPT THEM. AS THE CANADIANS NOTE, THERE LIMITED OFFICIAL USE

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IS A RISK IN THESE TERMS OF REFERENCE, BUT UNLESS THE U.S. IS PREPARED TO TAKE XXIII ACTION OR LET THE MATTER DROP

WE RECOMMEND THAT WE ATTEMPT ONCE MORE TO OBTAIN AGREEMENT
ON EITHER OF THE ABOVE TERMS OF REFERENCE. TO DO THIS,
HOWEVER, WE MUST CONVINCE THE CANADIANS, AND SINCE THE
LOCAL DEL HAS RECOMMENDED AGAINST ACCEPTANCE OF EITHER
TERMS OF REFERENCE THE APPROACH MUST BE MADE IN OTTAWA.
WE THEREFORE RECOMMEND THAT CANADIAN OFFICIALS IN OTTAWA
BE APPROACHED SOONEST IN ORDER TO OBTAIN THEIR ACQUIES-
CENCE IN ONE OF THE ABOVE TERMS OF REFERENCE. WE SHOULD
THEN TAKE INITIATIVE TO HAVE PATTERSON CALL ANOTHER
INFORMAL MEETING WITHIN THE NEXT WEEK OR TWO IN ORDER TO
HAMMER OUT FINAL AGREEMENT ON TERMS OF REFERENCE PRIOR
TO NEXT GATT COUNCIL MEETING TENTATIVELY SCHEDULED FOR
SECOND WEEK IN JUNE. PLEASE ADVISE. VANDEN HEUVEL

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